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CHURCH OF SCIENTOLOGY
9 INTERNATIONAL

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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY)
14 INTERNATIONAL, a California not-)
for-profit religious corporation,)

15)
16)
17 Plaintiff,)

18 vs.)

19)
20)
21 GERALD ARMSTRONG; DOES 1 through)
25, inclusive,)

22)
23 Defendants.)

CASE NO. 157 680

[CONSOLIDATED]

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER; REQUEST
FOR SANCTIONS AGAINST
DEFENDANT GERALD ARMSTRONG
AND HIS ATTORNEY, FORD
GREENE

DATE: March 9, 1995

TIME: 10:00 a.m.

DEPT: LAW AND DISCOVERY

HEARING JUDGE: DISCOVERY
REFEREE

TRIAL DATE: May 18, 1995

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1 to those to whom Armstrong had been spreading false information.
2 [Exhibit B]. The interrogatories dissect the documents **sentence**
3 **by sentence**, and ask the Church to identify who wrote the
4 sentence, when the person wrote the sentence, and for detailed
5 descriptions of what each sentence in the document really means,
6 in a manner that truly defies rational response. Questions 40 -
7 49 are a typical series of such questions:

8 40. IDENTIFY who wrote SENTENCE 4 (SENTENCE 4
9 refers to the sentence found in PLAINTIFF'S PRODUCTION
10 at Bates stamped page 200049 which states "**Since the
case was heard, Armstrong has adopted a degraded life-
style and developed some odd financial ideas.**")

11 41. WHEN did the person IDENTIFIED in your answer
12 to 40 above write SENTENCE 4?

13 42. State each fact on which you base the
14 allegations in SENTENCE 4.

15 43. IDENTIFY each document which supports the
16 allegations of SENTENCE 4.

17 44. DESCRIBE what about Armstrong's life-style at
18 the time of the preparation of DA DOC A rendered it a
19 "degraded life-style," as stated in SENTENCE 4. In
20 these interrogatories, DESCRIBE, when referring to a
"life-style," means state in plain English by comparing
the details of such a "life-style," including but not
limited to the surroundings and activities, with a
"normal" or "usual" or "commonplace" lifestyle, as
"normal," "usual" and "commonplace" are normally
understood.

21 45. DESCRIBE in as much detail as possible
22 Armstrong's life-style referred to in SENTENCE 43,
23 including but not limited to Armstrong's surroundings
24 and activities.

25 46. DESCRIBE what about Armstrong's life-style,
26 including but not limited to Armstrong's surroundings
27 and activities, at present time renders it a "degraded
28 life-style," as stated in SENTENCE 4.

29 47. DESCRIBE what about Armstrong's financial
30 ideas referred to in SENTENCE 4 makes such ideas odd?
31 In these interrogatories, DESCRIBE, when referring to a
32 "financial idea," means state in plain English by
33 comparing the details of such a "financial idea" with a

1 "normal" or "usual" or "commonplace" financial idea, as
2 "normal," "usual" and "commonplace" are normally
understood.

3 48. IDENTIFY Armstrong's financial ideas referred
4 to in SENTENCE 4. IDENTIFY, when used in this
5 interrogatory, means state in plain English as concise,
separate concepts understandable to economists and
other financial professionals.

6 49. DESCRIBE what Armstrong did to "develop" each
7 of the financial ideas referred to in SENTENCE 4. In
8 these interrogatories, DESCRIBE, when referring to the
9 developing of a "financial idea," means state in plain
English each step or steps in such development, tests
that were made, and the results of all such tests.

10 [Ex. A, pp. 8 -- 9, emphasis in original]

11 These questions may be intensely interesting to Armstrong.
12 However, they have **nothing** to do with any issue that remains in
13 this case. Indeed, the Church's comments about Armstrong (as
14 opposed to Armstrong's comments about the Church) have been
15 **specifically removed from consideration in this action by Order**
16 **of the Honorable David Horowitz.**

17 In the breach of contract action (now consolidated herein),
18 Armstrong brought a cross-complaint against the Church in which
19 he alleged, inter alia, that the **Church** had breached the
20 settlement agreement at issue herein by commenting about him to
21 third parties. [Exhibit C, Cross-Complaint, Third Cause of
22 Action, paras. 70 - 72.] The Church brought a motion for summary
23 adjudication, pointing out that the agreement specifically did
24 not prevent the Church from commenting about Armstrong, although
25 it emphatically did prevent Armstrong from commenting about the
26 Church. On August 16, 1994, Judge Horowitz granted the Church
27 summary adjudication, finding that,

28 The Agreement terms are clear and unambiguous.
[Armstrong] understood the terms and signed it. The

1 duties and obligations of the Agreement are clearly
2 stated. "Mutuality" and "reciprocal" duties cannot be
read into the unambiguous terms of the Agreement.

3 **There are no provisions in the Agreement**
4 **prohibiting the [Church] from referring to [Armstrong]**
5 **with the press or in legal pleadings or declarations.**
6 [Armstrong]'s beliefs as to what the Agreement should
7 have said, it's validity, or what his attorney said or
did to him are not relevant. The Agreement itself
acknowledges that no agreements or understandings have
been made among the parties aside from those set forth
in the Agreement.

8 [Ex. D, emphasis supplied.]

9 The documents which Armstrong inquires about, then, are
10 plainly not relevant to anything that remains in this action.
11 They are documents which, the Church acknowledges, the Church
12 prepared, and distributed to third parties, particularly the
13 press. So what? The Court has already held that the Church is
14 free to comment concerning Armstrong. Armstrong's displeasure
15 over the commentary by the Church is simply **not an issue in this**
16 **case.**

17 On January 13, 1995, after receiving the interrogatories,
18 plaintiff's counsel Laurie Bartilson wrote to Mr. Greene, asking
19 him to withdraw the interrogatories. In her letter she stated:

20 I have received your document entitled "Gerald
21 Armstrong's Amended Specially Prepared Interrogatories
22 to Church of Scientology International," a document
23 which, in violation of both Code and reason, contains
1,150 interrogatories, virtually none of which appear
to concern matters that are actually relevant to
matters which remain at issue in the above-entitled
case.

24 Ford, these unprofessional, repetitive, and
25 useless interrogatories don't do you or your client any
26 good. They are an abuse of the discovery process on
27 their face, intended solely to make extra work for
plaintiff and its counsel and delay the inevitable
trial in this matter.

28 Some months ago, you served a substantially

1 similar set of interrogatories. After discussion, you
2 agreed to withdraw those interrogatories, and attempt
3 instead to propound discovery that was in accord with
4 the Code of Civil Procedure. This latest effort is, if
5 anything, even worse than that first attempt, and I,
6 quite frankly, cannot believe that it represents the
7 true efforts of an attorney familiar with the
8 California Codes.

9 Please withdraw these interrogatories. If they
10 are not withdrawn voluntarily, and I am forced to seek
11 a protective order, I will ask the discovery referee to
12 charge all costs of the motion, jointly and severally,
13 to you and your client.

14 [Ex. E.]

15 Ms. Bartilson received no response to her letter. On
16 February 9, 1995, plaintiff's counsel Andrew Wilson spoke to Mr.
17 Greene, and reiterated that the interrogatories were improper,
18 did not comply with the Code of Civil Procedure, and demanded
19 that Mr. Greene withdraw the interrogatories and propound a
20 proper set in their stead. Mr. Greene refused to take any
21 action. [Exhibit I, Declaration of Laurie Bartilson, ¶ 3.] Mr.
22 Wilson left another message for Mr. Greene (with Mr. Armstrong,
23 his paralegal) on February 13, stating that the Church would be
24 forced to file a motion for protective order and seek sanctions
25 if the interrogatories were not withdrawn. There was no response
26 from Mr. Greene. [Id.]

27 I. THE CHURCH IS ENTITLED TO A PROTECTIVE ORDER STRIKING THE
28 INTERROGATORIES

Code of Civil Procedure Section 2019(b) provides that the
Court may issue a protective order restricting the use of
discovery methods if:

(1) The discovery sought is unreasonably
cumulative or duplicative, or is obtainable from some
other source that is more convenient, less burdensome,
or less expensive.

1 (2) The selected method of discovery is unduly
2 burdensome or expensive, taking into account the needs
3 of the case, the amount in controversy, and the
4 importance of the issues at stake in the litigation.

5 Here, Armstrong has violated both of the 2019(b) tests. The
6 interrogatories are cumulative discovery. They apparently seek
7 detailed authentication of documents which the Church has already
8 acknowledged were prepared and distributed by its employees and
9 at its direction. Further, each of the documents was provided in
10 document production to Armstrong along with its attached
11 supporting documents. As to content, the documents speak for
12 themselves, and detailed queries about what each sentence really
13 means are simply cumulative and harassing. The identity of each
14 employee of the Church who wrote each sentence of the documents
15 is obviously not relevant information, nor is it likely to lead
16 to the discovery of relevant information, nor is a dissection of
17 the ideas or concerns which each employee had at the time that
18 they wrote the sentences.

19 Further, the interrogatories are unduly burdensome and
20 expensive to answer, particularly in relation to the importance
21 of the questions to any issues in the case. Armstrong has asked
22 the Church to answer 1,150 questions about documents that are not
23 even at issue. Counsel could easily have formulated a few simple
24 questions intended to elicit information relevant to issues in
25 the case, if discovery were truly the intent of the
26 interrogatories. Instead, Mr. Greene has refused to meet and
27 confer or limit in any way these oppressive interrogatories.
28 Their obvious purpose is harass, annoy and burden the Church,
rather than to obtain relevant information.

1 Code of Civil Procedure Section 2030(c) provides that a
2 party make not propound more than 35 specially prepared
3 interrogatories, unless the interrogatories are accompanied by a
4 declaration from the party's attorney which declares, under oath,
5 that **none** of the interrogatories in the set is being propounded
6 for an improper purpose, "such as to harass the party, or the
7 attorney for the party, to whom it is directed, or to cause
8 unnecessary delay or needless increase in the cost of
9 litigation." No such declaration of Mr. Greene accompanied this
10 outrageous discovery demand,¹ rendering the request invalid on
11 its face. Further, C.C.P. 2030 also provides that if the
12 responding party seeks a protective order on the ground that the
13 number of special interrogatories is unwarranted, "the
14 propounding party shall have the burden of justifying the number
15 of these interrogatories." (Emphasis added)

16 Armstrong is unable to meet the burden imposed by the Code
17 of Civil Procedure. The facts do not warrant 35 interrogatories
18 about these irrelevant documents, much less 1,150. Under these
19 circumstances, a protective order should issue, and the
20 interrogatories should be stricken. Armstrong should be directed
21 that, should he chose to serve additional interrogatories, he is
22 limited to the number of interrogatories provided by statute.
23 C.C.P. 2030(c).

24 ///

25 ///

26

27 ¹ The earlier set of substantially identical interrogatories,
28 which Mr. Greene propounded and withdrew in 1994, was accompanied
by such a declaration.

1 **II. ARMSTRONG AND HIS LAWYER SHOULD BE SANCTIONED FOR THIS**
2 **DISCOVERY ABUSE**

3 Armstrong has attempted since the inception of this action
4 to involve the court and referee in issue after issue which has
5 absolutely nothing to do with the breach of contract and
6 fraudulent conveyance claims being litigated. It is a sleight of
7 hand -- a trick -- to avoid the consequences of his own actions.
8 This set of interrogatories is just another attempt to harass and
9 annoy the plaintiff, to drive up the discovery costs, and to
10 delay the trial in this case. Armstrong's bad faith litigation
11 tactics should not be countenanced.

12 C.C.P. §128.5(a) provides in relevant part that the court,
13 "may order a party, the party's attorney, or both to pay any
14 reasonable expenses, including attorney's fees, incurred by
15 another party as a result bad-faith actions or tactics that are
16 frivolous or solely intended to cause unnecessary delay." As
17 plaintiffs have demonstrated, Armstrong and his lawyer have
18 pursued, without justification, a frivolous, bad-faith effort to
19 impose discovery on plaintiff solely to delay, harass, and annoy.
20 Under these circumstances, and for all of the reasons previously
21 stated, plaintiffs request that the Referee recommend to the
22 Honorable Gary Thomas that the Court order both defendant and his
23 attorneys to pay to plaintiff sanctions in the amount of \$1,150.
24 Day v. Rosenthal (1985) 170 Cal.App.3d 1125, 1171, 217 Cal.Rptr.
25 89.

26 **CONCLUSION**


27 Defendant Armstrong and his attorney, Ford Greene,
28 propounded a set of 1,150 interrogatories to plaintiff. They

1 refused all efforts to meet and confer, and refused to replace
2 the interrogatories with a more manageable number. Moreover, the
3 interrogatories themselves wholly concern matters that have
4 already been adjudicated by the Court to be irrelevant. For all
5 of these reasons, together with the reasons discussed above, the
6 Referee should recommend to the Court that a protective Order
7 issue, striking the interrogatories and requiring defendant
8 Armstrong and Ford Greene to pay to plaintiff sanctions in the
9 amount of \$1,150.

10 Dated: February 14, 1995

Respectfully submitted,

11 MOXON & BARTILSON

12
13 By: 
Laurie J. Bartilson

14 Andrew H. Wilson
15 WILSON, RYAN & CAMPILONGO

16 Attorneys for Plaintiff,
17 CHURCH OF SCIENTOLOGY INTERNATIONAL
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On February 14, 1995, I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PROTECTIVE ORDER; REQUEST FOR SANCTIONS AGAINST DEFENDANT GERALD ARMSTRONG AND HIS ATTORNEY, FORD GREENE on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
 HUB Law Offices
 711 Sir Francis Drake Blvd.
 San Anselmo, CA 94960-1949

Michael Walton
 700 Larkspur Landing Circle
 Suite 120
 Larkspur, CA 94939

William R. Benz, Esq.
 900 Larkspur Landing Circle, No. 185
 Larkspur, CA 94939

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that

same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on February 14, 1995 at Los Angeles, California.

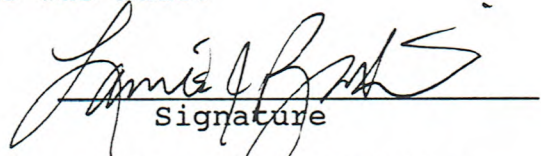
[] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _____ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bartilson
Print or Type Name


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)